

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF MISSISSIPPI  
NORTHERN DIVISION**

JAMES E. DAVIS, ET AL.

VS.

CAUSE NO. 3:11-CV-093-MPM-SAA

ACA FINANCIAL GUARANTY  
CORPORATION, and  
JOHN DOES One through Ten  
DEFENDANTS

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**NOTICE OF VOLUNTARY DISMISSAL OF PLAINTIFF  
ROBIN GERUT WITHOUT PREJUDICE**

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Pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i), Plaintiff Robin Gerut hereby notifies this Court and the parties that she voluntarily dismisses without prejudice all of her claims against all Defendants. This notice concerns the claims of Plaintiff Robin Gerut only and does not concern any other Plaintiffs or claims. Rule 41(a)(1)(A)(i) provides that a notice of dismissal is appropriate for voluntary dismissal “before the opposing party serves either an answer or a motion for summary judgment.” In this case, Defendants have only filed a Motion to Dismiss Plaintiffs’ Seconded Amended Complaint; according to the Court’s docket, they have not filed an answer or a motion for summary judgment. *See generally, Carter v. United States*, 547 F.2d 258 (5<sup>th</sup> Cir. 1977) (holding that where plaintiff filed a motion to dismiss his lawsuit before defendants filed an answer or summary judgment motion, he had the absolute right to such dismissal, and defendants’ own motion to dismiss would not be considered the equivalent of an answer).

Respectfully submitted, this the 4<sup>th</sup> day of October, 2013.<sup>1</sup>

By: /s/JESSE MITCHELL, III  
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<sup>1</sup> On October 4, 2013, at approximately 2:00 p.m., Plaintiff Robin Gerut filed this her Notice of Voluntary Dismissal with this Court as identified as Dkt. No. 111. However, it was improperly filed in the CM/ECF system as a Motion. This filing is done at the direction of the Court to correct this filing error on the CM/ECF system.

CERTIFICATE OF SERVICE

I hereby certify that on October 4, 2013, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all counsel of record.

Respectfully Submitted,

/s/ JESSE MITCHELL, III  
JESSE MITCHELL, III (MSB 103020)